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01 NOV 2006

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In re Application of :  
DRESSEL et al. :  
Application No.: 10/542,899 : DECISION ON PETITION  
PCT No.: PCT/US2004/001533 :  
Int. Filing Date: 21 January 2004 : UNDER  
Priority Date: 21 January 2003 :  
Attorney Docket No.: 1216-04302 : 37 CFR 1.497(d)  
For: METHOD AND APPARATUS FOR :  
APPLYING A FOAM LAYER :  
:

This decision is in response to applicants' "PETITION TO CORRECT INVENTORSHIP BY THE ADDITION OF INVENTOR(S) (37 CFR 1.497(d)(1))" filed in the United States Patent and Trademark Office (USPTO) on 31 August 2006.

**BACKGROUND**

On 21 January 2004, applicants filed international application PCT/US2004/001533, which designated the United States and claimed a priority date of 21 January 2003. A copy of the international application was communicated to the USPTO from the International Bureau on 05 August 2004. The thirty-month period for paying the basic national fee in the United States expired at midnight on 21 July 2005.

On 20 July 2005, applicants filed a transmittal letter for entry into the national stage in the United States which was accompanied by, *inter alia*, the basic national fee and the surcharge under 37 CFR 1.492(h) for filing any of the search fee, the examination fee, or the oath or declaration after the date of the commencement of the national stage.

On 27 December 2005, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventors in compliance with 37 CFR 1.497(a)-(b) was required.

On 17 January 2006, applicants filed a declaration of inventors naming David C. Dressel and Peter N. Longtin as inventors.

On 01 August 2006, the DO/EO/US mailed a NOTIFICATION OF DEFECTIVE RESPONSE (Form PCT/DO/EO/916) indicating that the second inventor listed on the declaration filed 17 January 2006 did not appear on the international application.

On 31 August 2006, applicants filed the instant "PETITION TO CORRECT INVENTORSHIP BY THE ADDITION OF INVENTOR(S) (37 CFR 1.497(d)(1))". The petition was accompanied by a statement by Peter N. Longtin, a consent of assignee statement, and a statement under 37 CFR 3.73(b).

### DISCUSSION

37 CFR 1.497(d), provides:

(d) If the oath or declaration filed pursuant to 35 U.S.C. 371(c)(4) and this section names an inventive entity different from the inventive entity set forth in the international application, or if a change to the inventive entity has been effected under PCT Rule 92<sup>bis</sup> subsequent to the execution of any oath or declaration which was filed in the application under PCT Rule 4.17(iv) or this section and the inventive entity thus changed is different from the inventive entity identified in any such oath or declaration, applicant must submit:

(1) A statement from each person being added as an inventor and from each person being deleted as an inventor that any error in inventorship in the international application occurred without deceptive intention on his or her part;

(2) The processing fee set forth in Sec. 1.17(i); and

(3) If an assignment has been executed by any of the original named inventors, the written consent of the assignee (see Sec. 3.73(b) of this chapter); and

(4) Any new oath or declaration required by paragraph (f) of this section.

Applicants have satisfied items (1) and (2).

Item (3) has not been satisfied. Assignment to Foam Enterprises, Inc. has been established. However, acquisition of Foam Enterprises, Inc. by BASF has not been established. Although the consent of assignee statement states that a copy of a Stock Purchase Agreement is included, no such copy appears in the file.

As to item (4), a new declaration is not required by 37 CFR 1.497(f) in the instant situation.

### CONCLUSION

The request under 37 CFR 1.497(d) is **DISMISSED** without prejudice for the reasons set forth above.

If reconsideration on the merits of this petition is desired, a proper reply must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.497(d)." No additional petition fee is required.

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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